

08-25-06

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Total Number of Pages in This Submission 14 Attorney Docket Number 2023796-7036165001

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final (pgs). <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Formal Drawing(s) (sheets) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm	Bingham McCutchen LLP		
Signature			
Printed Name	Gerald Chan		
Date	August <u>23</u> , 2006	Reg. No.	51,541

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature	
Typed or printed name	Sheila Badon
Date	August 23, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Effective on 12/08/2004.
Fee Pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL for FY 2006

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 500.00)

Complete If Known

Application Number	10/812,718
Filing Date	March 29, 2004
First Named Inventor	Jon C. Taenzer
Examiner Name	Ping Lee
Art Unit	2644
Attorney Docket No.	2023796-7036165001

METHOD OF PAYMENT (check all that apply)

Check Credit Card Money Order None Other (please identify) : _____

Deposit Account Deposit Account Number: 502518 Deposit Account Name: Bingham McCutchen LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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Under 37 CFR 1.16 and 1.17

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		
	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fees Paid (\$)
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Small Entity	
				Fee (\$)	Fee (\$)
-20 or HP=	x	=	_____	50	25
HP = highest number of total claims paid for, if greater than 20.				200	100
Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	360	180
- 3 or HP=	x	=	_____	Multiple Dependent Claims	
HP = highest number of independent claims paid for, if greater than 3.				Fee (\$)	Fee Paid (\$)

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	_____

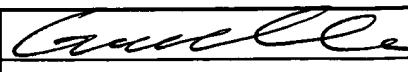
4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge) : Appeal Brief (in triplicate)

500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	51,541	Telephone	650-849-4960
Name (Print/Type)	Gerald Chan			Date	August 23, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Patent
GNJ7036165001

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of:) Group Art Unit: 2644
)
Jon C. Taenzer) Examiner: Ping Lee
)
Serial No.: 10/812,718)
)
Filed: March 29, 2004)
)
For: HEARING SYSTEM /)
BEAMFORMER)

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant submits this Appeal Brief pursuant to the Notice of Appeal filed May 23, 2006.

This brief is submitted in triplicate.

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Related Appeals and Interferences	begins on page 2
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I. REAL PARTY IN INTEREST

The real party in interest is the assignee GN Resound North America Corporation.

II. RELATED APPEALS AND INTERFERENCES

To the best of Applicant's knowledge, there are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 17-35 are pending. Claims 17-35 are rejected, and are appealed. Claims 17 and 23 are independent claims.

IV. STATUS OF AMENDMENTS

Amendment After Final under 37 C.F.R. § 1.116 was filed on February 28, 2006, in which claims 36-52 were canceled. The amendments to the claims were entered according to the Advisory Action mailed on March 15, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present section of the Appeal Brief is set forth merely to comply with the requirements of 37 C.F.R. § 41.37(c)(v) and is not intended to limit the pending claims in any way.

Claim 17 recites:

A method of achieving directional pickup of a radiated energy signal using a shadowing effect created by an energy propagation barrier, the method comprising:

locating a first sensor on one side of the barrier and a second sensor on an opposite side of the barrier;

determining a difference between amplitudes of signals respectively produced by the first and second sensors;

adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals; and

summing together the adjusted signals to produce a directional signal.

Claim 23 recites:

Apparatus for achieving directional pickup of a radiated energy signal using a shadowing effect created by an energy propagation barrier, the apparatus comprising:

a first sensor configured for being located on one side of the barrier;

a second sensor configured for being located on an opposite side of the barrier;

processing circuitry configured for determining a difference between the amplitudes of signals respectively produced by the first and second sensors, for adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals; and for summing together the adjusted signals to produce a directional signal.

Examples of a method that includes locating a first sensor on one side of the barrier and a second sensor on an opposite side of the barrier, determining a difference between amplitudes of signals respectively produced by the first and second sensors, adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals, and summing together the adjusted signals to produce a directional signal, are described on pages 5-17 of the specification.

Examples of an apparatus for achieving directional pickup of a radiated energy signal using a shadowing effect created by an energy propagation barrier, having a first sensor configured for being located on one side of the barrier, a second sensor configured for being located on an opposite side of the barrier, and processing circuitry configured for determining a difference between the amplitudes of signals respectively produced by the first and second sensors, for adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals, and for summing together the adjusted signals to produce a directional signal, are described on pages 5-17 of the specification.

VI. ISSUES

The issues for this appeal are (A) whether claims 17-52 comply with the written description requirement under 35 U.S.C. § 112, (B) whether claims 17, 19-21, 23, 25-27, 36, 46, and 47 are patentable under 35 U.S.C. § 102(b) over “Microphone-Array Hearing Aids with Binaural Output - Part II: A Two-Microphone Adaptive System” by Daniel P. Welker (“Welker”), and (C) whether claims 17, 18, 23, 24, 36, 42-45, and 49-52 are patentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,697,494 (“Klootsema”).

VII. ARGUMENTS

Claims 18-22 and 29-32 depend from independent claim 17, and therefore, rise and fall with claim 17. Claims 24-28 and 33-35 depend from independent claim 23, and therefore, rise and fall with claim 23.

A. Claim Rejections under 35 U.S.C. § 112

Claims 17-52 stand rejected under 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. For written description rejection under § 112, “the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed.” MPEP 2163.02. Also, the “subject matter of the claim need not be described literally (i.e., using the same terms or in haec verba) in order for the disclosure to satisfy the description requirement.” MPEP 2163.02.

According to the Office Action, the specification allegedly does not disclose a difference between amplitudes of signals respectively produced by the first and second sensors, and adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals, as recited in claim 17, and similarly recited in claim 23. Applicant respectfully disagree. Page 15, lines 18-21 of the application disclose amplitude difference between right ear and left ear signals in relation to head shadowing effect. In addition, page 15, lines 5-14 discuss beamforming technique based on head shadowing effect to optimize signal-to-noise ration, and adjusting

amplitudes in a beamformer embodiment. Furthermore, figures 15, 16, 19, and 20, and their corresponding passages discuss interaural difference, and adjusting signals based on the interaural difference. Beamforming technique for adjusting signals is also discussed throughout the specification. As such, the specification conveys to those skilled in the art that Applicant was in possession of the claimed invention. For at least the foregoing reasons, Applicant respectfully submits that claims 17-52 satisfy 35 U.S.C. § 112.

B. Claim Rejections under 35 U.S.C. § 102

Applicant respectfully notes that in order to sustain a claim rejection under § 102, each of the claimed elements must be disclosed, either expressly or inherently, in the cited reference. Applicant submits that claims 17 and 23 are patentable over Welker because Welker does not disclose or suggest one or more limitations recited in these claims.

Claim 17 recites determining a difference between amplitudes of signals respectively produced by the first and second sensors, and adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals. Claim 23 recites similar limitations. Welker does not disclose or suggest the above limitations. Welker discloses a microphone system, wherein signals from right and left microphones, f_R and f_L , respectively, are adjusted (See figure 2). Notably, in the top line of figure 2, signal f_L is added to signal f_R , and in the bottom line, signal f_L is subtracted from signal f_R . As such, Welker does not disclose or suggest adjusting amplitudes of signals (e.g., both left and right signals) based on a determined amplitude difference (i.e., the same amplitude difference).

According to the Advisory Action, figure 2 of Welker allegedly discloses modifying left signal by W_k , and modifying right signal by W_k . Applicant respectfully disagree. First, W_k is not an amplitude difference. As such, even assuming that Welker discloses modifying left and right signals based on W_k (which is not true), Welker still does not disclose or suggest modifying left and right signals based on an amplitude difference. In addition, figure 2 discloses that W_k is used in a signal path for the left sensor, and that W_k is not used in the right signal path. As such, figure 2 of Welker does not disclose or suggest the above limitations.

For at least the foregoing reasons, Applicant respectfully submits that claims 17 and 23, and their respective dependent claims, are patentable over Welker under 35 U.S.C. § 102.

C. Claim Rejections under 35 U.S.C. § 103

Applicant submits that claims 17 and 23 are patentable over Klootsema.

Claim 17 recites determining a difference between amplitudes of signals respectively produced by the first and second sensors, and adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals. Claim 23 recites similar limitations. Applicant agrees with the Examiner that Klootsema does not disclose or suggest determining an amplitude difference. According to the Office Action, it would have been allegedly obvious to modify Klootsema by determining an amplitude difference so that the signals may be adjusted. Applicant respectfully disagrees. Klootsema discloses matching the levels of microphone signals, and does not disclose or suggest determining an amplitude difference, and adjusting signals based on the same determined amplitude difference. Also, just because matching of signals is disclosed, it does not necessitate a finding that the matched signals are determined based on an amplitude difference. As the Examiner correctly pointed out, there are different techniques that can be used to match signals. For example, two signals may be matched by adding the two signals and taking an average, in which case, there will be no need to determine an amplitude difference. As another example, two signals may also be matched by making one equal to the other. In such case, there will also be no need to determine an amplitude difference. Furthermore, even assuming that Klootsema discloses determining amplitude difference (which is not true), there is nothing in Klootsema that disclose or suggest adjust left signal based on the amplitude difference, and adjusting right signal based on the amplitude difference.

For at least the foregoing reasons, Applicant respectfully submits that claims 17 and 23, and their respective dependent claims, are patentable over Klootsema under 35 U.S.C. § 103.

VIII. CONCLUSION

For the above reasons, Applicant respectfully submits that rejection of claims 17-35 has been overcome. Accordingly, Applicant requests that the Board of Patent Appeals and Interferences overrule the Examiner and allow claims 17-35.

Respectfully submitted,

Bingham McCutchen LLP

Dated: August 23, 2006

By: Gerald Chan
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APPENDIX A: Pending Claims

Listing ofAppealed Claims 17-35.

17. (Previously Presented) A method of achieving directional pickup of a radiated energy signal using a shadowing effect created by an energy propagation barrier, the method comprising:

- locating a first sensor on one side of the barrier and a second sensor on an opposite side of the barrier;
- determining a difference between amplitudes of signals respectively produced by the first and second sensors;
- adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals; and
- summing together the adjusted signals to produce a directional signal.

18. (Original) The method of claim 17, wherein the adjusted signals are of approximately equal magnitude.

19. (Previously Presented) The method of claim 17, wherein the adjusted signals are summed together to produce multiple directional signals.

20. (Original) The method of claim 19, wherein the multiple directional signals form a binaural signal pair including a first directional signal in which energy from the first sensor is greater than energy from the second sensor, and a second directional signal in which energy from the second sensor is greater than energy from the first sensor.

21. (Previously Presented) The method of claim 17, further comprising, for each of multiple frequency bands:

- deriving a phase correction value; and

applying the phase correction value within that frequency band.

22. (Previously Presented) The method of claim 21, wherein the amplitude difference between the signals is determined within each of the multiple frequency bands, and the phase correction value determination is based on the amplitude difference determined within the respective frequency band.

23. (Previously Presented) Apparatus for achieving directional pickup of a radiated energy signal using a shadowing effect created by an energy propagation barrier, the apparatus comprising:
a first sensor configured for being located on one side of the barrier;
a second sensor configured for being located on an opposite side of the barrier;
processing circuitry configured for determining a difference between the amplitudes of signals respectively produced by the first and second sensors, for adjusting the amplitudes of the signals based on the determined amplitude difference to produce adjusted signals; and for summing together the adjusted signals to produce a directional signal.

24. (Original) The apparatus of claim 23, wherein the adjusted signals are of approximately equal magnitude.

25. (Previously Presented) The apparatus of claim 23, wherein the processing circuitry is configured for summing together the adjusted signals to produce multiple directional signals.

26. (Original) The apparatus of claim 25, wherein the multiple directional signals form a binaural signal pair including a first directional signal in which energy from the first sensor is greater than energy from the second sensor, and a second directional signal in which energy from the second sensor is greater than energy from the first sensor.

27. (Previously Presented) The apparatus of claim 23, wherein the processing circuitry is configured for, for each of multiple frequency bands, deriving a phase correction value and applying the phase correction value within that frequency band.

28. (Previously Presented) The apparatus of claim 27, wherein the processing circuitry is configured for determining the amplitude difference between the signals within each of the multiple frequency bands, and the processing circuitry is configured for deriving a phase correction value based on the amplitude difference determined within the respective frequency band.

29. (Previously Presented) The method of claim 17, wherein the energy propagation barrier is the head of a user.

30. (Previously Presented) The method of claim 17, wherein the signals are sound signals.

31. (Previously Presented) The method of claim 30, further comprising processing the directional signal to produce a resultant sound.

32. (Previously Presented) The method of claim 31, further comprising inputting the resultant sound into left and right ears of a user.

33. (Previously Presented) The apparatus of claim 23, wherein the energy propagation barrier is the head of a user.

34. (Previously Presented) The apparatus of claim 23, wherein the first and second sensors are microphones.

35. (Previously Presented) The apparatus of claim 23, wherein the processing circuitry comprises a digital signal processor (DSP).

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None